IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 3698 of 2006()

CC.247/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: 1ST ACCUSED

SUDHAKARAN, AGED 65 YEARS,
PROPRIETOR "SWATHI HARDWARES", KAZHAKOOTAM
-JUNCTION, THIRUVANANTHAPURAM.

BY ADV. SRI.K.K.VIJAYAN
SRI.SUMAN CHAKRAVARTHY

RESPONDENTS:

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1. S.MADHOOR,
IN REPRESENTATIVE CAPACITY OF MINORS MEETHU AND
MEGHA B-26, KAMALA MANDIR, SSK LANE,
JAWAHAR NAGAR, THIRUVANANTHAPURAM.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED
ADV. SRI.R.GOPAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3698 OF 2006

Dated this the 20th day of December, 2006.

ORDER

The petitioner has come to this Court with a prayer to invoke the powers under Section 482 Cr.P.C to quash the final report filed against him by the police alleging commission of the offences punishable under Section 454 and 380 read with 34 I.P.C. He is the 1st accused in the case. The co-accused(the 2nd accused) is the brother of one Geetha whose husband is the defacto complainant.

2. The allegation against the petitioner is that he in furtherance of his common intention along with the 2nd accused trespassed into a property including a building belonging to the children of the said Geetha-the sister of the 2nd accused and committed theft of articles from the said property. A complaint was filed before the learned Magistrate. The same was referred to the police under Section 156(3) Cr.P.C. Investigation was conducted by the police and it is after such investigation that the final report was filed against the petitioner and the co-accused alleging the commission of offences punishable under Sections 454 & 380 read with 34 I.P.C. Cognizance has been taken by the learned Magistrate.

3. The petitioner had entered appearance through counsel and without and before claiming discharge from the learned Magistrate under Section 239 Cr.P.C, he has rushed to this Court with this petition under Section 482 Cr.P.C to quash the proceedings initiated against him.

4. What are the reasons ? The petitioner would contend that he is not a tenant under deceased Viswanathan who died unmarried and issueless. The property admittedly belonged to him. The said Viswanathan had a brother, whose children are the 2nd accused in this case and Geetha, the wife of the defacto complainant. The crux of the disputes is whether Viswanathan who expired on 12.10.2003 had executed a valid Will dt.29.01.2001 and whether he had prior to his death executed a settlement deed dt.5.7.02 in favour of the children of Geetha-the sister of the 2nd accused. The defacto complainant claims to be the guardian of the said minor children of Geetha.

5. At this stage and with the available inputs now, it is certainly impossible for this Court in this proceedings under Section 482 Cr.P.C to decide whether the settlement deed in favour of the children of Geetha is valid or whether the Will has taken effect on the death of the said Viswanathan. I am certainly of the opinion that the contentions of the rival contestants will

have to be resolved by the learned Magistrate at the appropriate stages. I am not certainly persuaded to agree that this is a fit case, where the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C can or ought to be invoked to prematurely terminate the proceedings against the petitioner herein. The petitioner must raise appropriate contentions before the learned Magistrate at the appropriate stages and claim discharge under Section 239 Cr.P.C or acquittal after the trial. No compelling reasons are shown to exist which can persuade this Court at this stage to invoke the powers under Section 482 Cr.P.C and prematurely terminate the proceedings against the petitioners.

6. In the result, this Crl.M.C is, dismissed. I may however hasten to observe that I have not intended to express any opinion on merits about the right of the petitioner to claim discharge under Section 239 Cr.P.C or claim acquittal at the later stage. The learned Magistrate must consider such pleas raised on the basis of the available materials, of which he can take cognizance of, at such stage.

R.BASANT

JUDGE

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